

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**WANDA L. STRALEY**

Claimant

v.

**GENERAL MOTORS, LLC**

Self-Insured Respondent

Docket No. 1,074,211

**ORDER**

Respondent, by Frederick J. Greenbaum and Kristina D. Schlake, requests review of Administrative Law Judge Kenneth J. Hursh's September 10, 2015 preliminary hearing Order. Zachary A. Kolich appeared for claimant.

The record on appeal is the same as that considered by the judge and consists of the transcript of the September 9, 2015 preliminary hearing and exhibits thereto, in addition to all pleadings contained in the administrative file.

**ISSUES**

The judge concluded claimant's repetitive job duties were the prevailing factor in causing ulnar nerve entrapment and/or cervical radiculopathy affecting claimant's right arm and hand. The judge concluded claimant's right shoulder calcific tendinitis did not arise out of and in the course of her employment.

Respondent requests the Order be reversed, arguing claimant failed to prove her injuries arose out of and in the course of her employment. Respondent asserts Dr. Hall's medical opinion that claimant's right shoulder, right elbow and cervical spine conditions are not related to her work, and due to aging and/or the way claimant sleeps, is more credible than the opinion provided by claimant's expert, Dr. Prostic. Claimant requests the Order be affirmed with respect to benefits granted for her right upper extremity and cervical spine, but argues the judge should have granted medical treatment for her right shoulder injury. Claimant asserts she proved her conditions arose out of and in the course of her employment and her repetitive job duties were the prevailing factor.

The issue for review is: did claimant meet with personal injury by repetitive trauma arising out of and in the course of her employment, including whether her asserted repetitive job duties were the prevailing factor causing her injury?

**FINDINGS OF FACT**

Claimant, 54 years old and right-hand dominant, has worked for respondent for the past 19 years, either operating a forklift or a "tugger," a piece of stand-up equipment that transports parts. In March 2010, she began working at the Fairfax plant in Kansas City, Kansas, as a fork truck driver. She no longer operated a tugger. For the past three years, claimant drove a forklift to deliver parts throughout the plant, sometimes unloading parts directly with the forklift, other times manually unloading parts from containers. Claimant testified a typical forklift run lasts 60 to 90 seconds and involves using her right hand constantly to manipulate the fork levers while steering with her left hand. She also spends one-half of her day looking over her right shoulder while driving in reverse. According to claimant, her job duties require repetitious pushing, pulling and lifting.

About a year and one-half ago, claimant began noticing numbness and tingling in her hands, which progressively worsened. Eventually, she developed pain in her right shoulder, along with pain and tingling in her right elbow. On May 31, 2015, claimant reported her symptoms to plant medical, where they iced her affected areas and gave her ibuprofen. She returned to work. On or about June 1 or 2, 2015, claimant returned to plant medical because she was unable to move her right arm. She was referred to the emergency room and given light duty work restrictions. Because respondent did not have accommodated work available, claimant was off work until July 13, 2015.

On June 4, 2015, claimant had an EMG which revealed evidence of mild right cubital tunnel syndrome. Claimant had an MRI of her right shoulder on June 10, 2015, which revealed calcific tendinitis at the surface of the distal supraspinatus tendon with surface fraying and prominent subacromial subdeltoid bursitis with synovitis and/or extruded hydroxyapatite deposition, along with a tear at the posterior superior labral base.

On July 15, 2015, at her attorney's request, claimant was evaluated by Edward J. Prostic, M.D., who reviewed medical records, took a history and performed a physical examination. Claimant complained of an ache from her right shoulder to the right side of her neck and down to her right elbow, with numbness and tingling going to the ring and little fingers. Claimant described clicking and popping in her right shoulder and difficulty reaching above shoulder level or behind her back. Claimant also reported episodic numbness and tingling during the workday. She denied taking medicine for her musculoskeletal problems.

On physical examination, Dr. Prostic reported claimant's cervical spine was satisfactory, except for one test for thoracic outlet syndrome. Right upper extremity examination revealed mildly decreased range of motion, mild to moderate weakness, a positive Tinel's test at claimant's right cubital tunnel, positive flexion compression ulnar nerve testing at her right elbow and wrist, and decreased right hand grip strength as compared to claimant's non-dominant left hand.

Dr. Prostin opined claimant sustained calcific tendinitis of the shoulder and ulnar nerve entrapment predominantly at the elbow. Dr. Prostin recommended a cubital tunnel release should ulnar nerve symptoms persist. Dr. Prostin stated, "The repetitive minor trauma each and every workday through June 2, 2015 while employed by the General Motors Corporation is the prevailing factor in causing the injuries, the medical conditions, and the need for medical treatment."<sup>1</sup>

On September 8, 2015, at respondent's attorney's request, claimant was evaluated by Michael M. Hall, M.D., who is board-certified in both orthopedics and hand surgery. Dr. Hall is fellowship trained in hand, elbow and shoulder surgery. On average, Dr. Hall sees over 3,000 upper extremity clinical visits a year and operates on 400 patients.

Dr. Hall reviewed medical records, took a history and performed a physical examination. Claimant complained of shoulder pain radiating into the brachium which increases with overhead activities or reaching behind her. She reported pain associated with numbness and tingling, mostly in the fourth and fifth digits of her right hand, with occasional numbness and tingling in her left hand. Claimant noted when she sleeps with her elbow bent, she notices an increase in numbness and a lot of discomfort the next morning.

Dr. Hall's physical examination revealed limited range of motion to claimant's neck, with a positive Spurling test, which reproduced symptoms down her right arm. Claimant had no obvious atrophy in her right shoulder. She had mildly reduced right shoulder range of motion with some AC joint tenderness. Claimant's right elbow had full range of motion, with a positive Tinel's and positive compression test on both sides, which reproduced numbness and tingling to both hands, the right more than the left. Dr. Hall diagnosed claimant with calcific tendinitis of her right shoulder, mild right ulnar neuropathy at her elbow, hypothyroidism and possible cervical radiculopathy. Dr. Hall opined none of these diagnoses were related to claimant's work.

Dr. Hall explained claimant's shoulder pain is secondary to calcific tendinitis, which is similar to gout and has nothing to do with claimant's job. Additionally, Dr. Hall indicated he is familiar with driving a forklift and it does not involve a significant amount of flexion and extension of the elbow, nor is the elbow resting on hard surfaces for the entire day. Claimant told Dr. Hall she sometimes sleeps with her elbows bent, and when she does, she notices increased numbness. It was Dr. Hall's opinion claimant notices discomfort in the morning because she sleeps with her elbows bent at night, "like everybody else sleeps," which irritates her ulnar nerve.<sup>2</sup> Dr. Hall also indicated claimant's thyroid disease increases her ulnar nerve sensitivity.

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<sup>1</sup> P.H. Trans., Cl. Ex. 1 at 3.

<sup>2</sup> *Id.*, Resp. Ex. A at 3.

Dr. Hall stated, "The only thing that her job driving the forklift did was make it more apparent to her. It did not cause it. It is not the prevailing factor."<sup>3</sup> Finally, Dr. Hall noted his moving her neck recreated her symptoms going down her right arm with parasthesias, which is consistent with a possible double crush syndrome from her neck, making her ulnar nerve even more symptomatic in her elbow. Dr. Hall stated double crush syndrome has nothing to do with claimant driving a forklift, but rather is a condition that develops as people get older.

Claimant acknowledged in January 2000, she experienced numbness and pain after banging her right hand at work. She testified her symptoms subsided and she had no further problems after she was transferred to another position. While claimant does not specifically recall a right shoulder injury in August 2001, she denied receiving any treatment and indicated any problems involving her right shoulder subsided. Other than these two brief incidents, claimant denied any accidents or receiving any treatment involving her shoulders or upper extremities before June 2, 2015.

Claimant currently complains of a lot of pain in her right shoulder, with a shooting pain in her right elbow. She continues to experience numbness and tingling in both hands and wrists.

On page two of the September 10, 2015 Order, the judge stated:

So, the court was left with competing medical opinions. The shoulder problem, described by both physicians as "calcific" and, by Dr. Hall as similar to gout, sounded like a condition of aging, which would not be a compensable injury according to K.S.A. 44-508(f)(3). The right arm parasthesias was produced by the same head turning the claimant performed frequently while driving the forklift backwards. It looked like that condition was caused by the claimant's job duties.

From the preliminary record it is held repetitive workplace trauma was the prevailing factor in causing the ulnar nerve entrapment and/or cervical radiculopathy affecting the claimant's right arm and hand. It is held repetitive workplace trauma was not the prevailing factor in causing the claimant's right shoulder tendinitis.

The respondent shall designate to the claimant an orthopedic or neurosurgery specialist to evaluate and treat the claimant's right arm parasthesias. The respondent shall pay the claimant temporary total disability at the maximum compensation rate from June 2 through July 13, 2015 and shall be allowed a credit for payment of unearned wages as provided in K.S.A. 44-510f(b). The respondent shall reimburse the claimant \$350 unauthorized medical expense for the services of Dr. Prostic. The respondent shall not be liable for medical benefits for treatment of the claimant's right shoulder calcific tendinitis.

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<sup>3</sup> *Id.*, Resp. Ex. A at 3.

PRINCIPLES OF LAW

An employer is liable to pay compensation to an employee incurring personal injury by repetitive trauma arising out of and in the course of employment.<sup>4</sup> Claimant must prove her right to an award based on the whole record using a “more probably true than not true” standard.<sup>5</sup> Whether an injury by repetitive trauma arises out of and in the course of a worker’s employment depends upon the facts peculiar to that particular case.<sup>6</sup>

K.S.A. 2014 Supp. 44-508 states in part:

(e) “Repetitive trauma” refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. “Repetitive trauma” shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

...

(f)(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

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<sup>4</sup> K.S.A. 2014 Supp. 44-501b(b).

<sup>5</sup> K.S.A. 2014 Supp. 44-501b(c) & K.S.A. 44-508(h).

<sup>6</sup> *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, Syl. ¶ 3, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

(3)(A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

. . .

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

### **ANALYSIS**

As dictated by statute, whether the prevailing factor standard is met is dependent on all relevant evidence, not just the medical evidence. Based on careful review of the current evidence, this Board Member affirms the preliminary hearing Order conclusions regarding claimant's right cubital tunnel syndrome and her right shoulder, but reverses with respect to claimant's neck condition.

Claimant only testified about right shoulder and right elbow injuries. She did not testify about her neck. Dr. Prostic's conclusion claimant's right calcific tendinitis of her shoulder and right cubital tunnel conditions were the result of her work lacks explanation, but he noted she performed repetitious pushing, pulling and lifting, in addition to driving a forklift. Dr. Prostic did not specify any relationship between other potential defects seen on claimant's shoulder MRI and her work activities or with respect to the prevailing factor requirement. Dr. Prostic did not indicate claimant had a work-related neck condition or that her work was the prevailing factor in causing a neck injury.

Dr. Hall indicated claimant's right shoulder calcific tendinitis (and other right shoulder issues – AC joint disease, posterior capsular tightness and perhaps a SLAP tear) and right elbow neuropathy were not related to her work. Dr. Hall further noted claimant had "possible" cervical radiculopathy not related to her work. The doctor also indicated claimant "possibly" had double crush syndrome that was due to age, not from her job duties. He also stated claimant probably had mild cervical radiculopathy that escaped detection on claimant's EMG. Any such radiculopathy, according to the doctor, is not due to claimant's work.

The more convincing evidence, at least with respect to claimant's calcific tendinitis of her right shoulder, is that it is akin to gout. Calcification would appear to be more of an age-related problem or perhaps a personal health condition. This Board Member affirms the judge's conclusion that claimant's right shoulder is not compensable.

Based on insufficient evidence, claimant did not prove a work-related neck injury. It does not appear that she even alleged a neck injury through her testimony or her pleadings. The majority of Dr. Hall's report suggests the *possibility* of a neck injury and not the *probability* of a neck injury. Either way, Dr. Hall characterizes claimant's potential neck issues as unrelated to her work and Dr. Prostic drew no correlation between a neck injury and claimant's asserted repetitious minor trauma.

However, claimant's right elbow condition is predominantly and primarily due to her job duties. Claimant testified her job involved not just operating a forklift and the forklift controls, but manually lifting items. She described her work as constant, repetitive and heavy. She indicated needing to use a significant amount of force to move the forklift controls up or down and hold controls in place.

Dr. Hall had a strikingly different view of claimant's job duties. Dr. Hall indicated he has driven a forklift and his report makes it seem as if such job is easy. The doctor focused on what he perceived as insignificant elbow flexion and extension. Dr. Hall seems to assume whatever forklift he drove in the past is comparable to the forklift claimant operated. Such fact is not established by the record. This Board Member views claimant's job duties as sufficient to cause her right elbow injury.

Claimant told Dr. Hall that she notices increased numbness upon awakening when she sleeps with her elbows bent. Dr. Hall, in his report, assumes claimant sleeps at night with her elbows bent "like everybody else sleeps" and she wakes up with discomfort as a result. However, claimant did not tell Dr. Hall that she routinely sleeps with her elbows bent, just that she notices her symptoms more after she does so. Further, Dr. Hall rationalizes that because claimant notices a lot of discomfort in the morning, her ulnar nerve injury is due to the way she sleeps. Such rationale could just as easily be applied to claimant's work – her symptoms are more apparent to her when she drives a forklift, therefore, her job duties are the cause of her injury.

**CONCLUSIONS**

**WHEREFORE**, the undersigned Board Member affirms in part and reverses in part the September 10, 2015 preliminary hearing Order.<sup>7</sup>

Based on the evidence submitted to date, respondent is responsible for providing medical treatment for claimant's cubital tunnel syndrome at the right elbow, as specified in the judge's order. Respondent is not responsible to provide medical treatment for claimant's neck or right shoulder.

All other aspects of the preliminary hearing Order not inconsistent with this decision are affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November, 2015.

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HONORABLE JOHN F. CARPINELLI  
BOARD MEMBER

ec: Zachary A. Kolich  
zak@wallaceandkolich.com  
cpb@wallaceandkolich.com

Frederick J. Greenbaum  
mvpkc@mvplaw.com  
fgreenbaum@mvplaw.com  
jpearce@mvplaw.com

Kristina D. Schlake  
kschlake@mvplaw.com

Honorable Kenneth J. Hursh

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<sup>7</sup> By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(I)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.